

Book Review

Philippe Pierre and Fabrice Leduc (eds), *La réparation intégrale en Europe. Études comparatives des droits nationaux* (Éditions Larcier, Bruxelles 2012) 505pp. ISBN 978-2-9600997-3-7. € 104 (paperback).

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DOI 10.1515/jetl-2015-0021

Many JETL readers will be familiar with GRERCA, the *Groupe de recherche européen sur la responsabilité civile et l'assurance*, and some of their important research projects, including *Le droit français de la responsabilité civile confronté aux projets européens d'harmonisation* (2012). The present book tackles what the editors calls a 'founding myth of liability' (p 19), namely the principle of full compensation. At least this is a common translation of *réparation intégrale*, which in turn is based on *restitutio in integrum*, or *restitutio ad integrum*, depending on which Latin form the reader prefers. The English Latin term is indeed synonymous with 'full compensation' (which is the object of this study), whereas the German Latin term means 'restitution in kind', as opposed to monetary compensation (which is also addressed in the present book).

GRERCA devised a 37 point questionnaire (pp 22–25), covering general as well as a number of well-known particular issues of compensation, including contributory negligence and mitigation, fixed ceilings, punitive damages, compensation of future damage by one-off payments or by monthly allowances, use of (actuarial or other) tables, the egg shell skull rule, compensation for value or for costs of replacement or cure, and post-judgment developments of the damage suffered. Five questions aim at typical quantification, in particular for physical handicap, pain and suffering, and for calling off merger negotiations.

Given that GRERCA comprises an association of four French and one Swiss research centre(s), it is unsurprising that French law assumes a focal point, which is used openly as reference in some of the questions, for example no 5: 'French law (art 1150 Code civil) limits compensation in contract law to damage foreseeable at the time of the conclusion of the contract. Would you say that in such a case, there is full compensation?'

The same question also shows that the authors are frequently interested in perceptions, not only in results or dogmatic issues.

Most of this book (Part II, pp 105–490) reproduces the answers for fifteen domestic laws, compiled partly by academic lawyers, including some well-known comparativists, partly by an impressive collection of responses from the supreme courts of Austria, Germany, Ireland, Italy and Sweden. Some legal systems are represented by several sets of answers: two each for France, Germany and Poland, three for English law (mostly referred to as *droit britannique* or *droit du Royaume-Uni*), and four for Belgium. Swiss law is represented by one set of replies presented by three co-authors.

The smaller Part I presents the findings derived from these responses. Fabrice Leduc tackles the general notion (*conception générale*) of full compensation (pp 31–45). She distinguishes between legal systems which understand full compensation as congruence between loss and compensation (with French law taking the lead, joined by Belgian, German, Italian, Luxembourgian and Spanish law), those which see full compensation more as a principle of non-enrichment, allowing compensation to fall behind the loss suffered (Dutch, Hungarian, Polish and Swiss law), and those which treat full compensation as a principle of non-impo- verishment, allowing for some instances of enrichment (English and Irish law). This partially overlaps with a second distinction between the compensation of loss factually suffered and that of legally recognised loss, into which notions of contributory negligence and loss foreseeable at the time of the conclusion of a contract are incorporated. Not all those distinctions are evident; the author notes some contradictory responses for the same legal system (p 44). She also points out that embracing a notion of legally recognisable damage, by way of excluding non-recognised losses *a priori*, makes it easier to claim adherence to the principle of full compensation (p 45).

Philippe Pierre addresses the implementation (*mise en oeuvre*) of this principle (pp 46–63), covering most of the more detailed points in the questionnaire. In particular, Pierre notes different divisions between the tasks of the trial judge and the appeal judge in the assessment of damage (pp 51–154), with a French law led group favouring the sovereignty of the trial judge, who is severely reigned in by German and a number of other domestic laws by appeal judges requiring the trial judge to provide very detailed explanations and justifications, with for example Belgian law taking an intermediate approach. English and Irish law make up a fourth group on the basis of the doctrine of binding precedent imposing direct rules on quantum.

Four specific issues are singled out for a more detailed comparative analysis, namely liability clauses (Christina Corgas-Bernard, pp 67–76), forms of compensation (Olivia Sabard, pp 77–83), punitive damages (Aline Vignon-Barrault, pp 84–96), and rationalisation of personal injury awards (Julien Bourdoiseau, pp 97–102).

Questionnaire-based comparative surveys have some inherent drawbacks, and the present book has not been able to overcome them all. First, in order to come up with a system neutral questionnaire which does not push respondents into the perspectives or categories of any particular legal system, one would almost need to have all the answers before asking the questions. Secondly, as the respondents are not talking to each other, it is hard to pick up whether similar answers really indicate similarity between the legal systems, and different answers demonstrate differences; a legal system which is comparatively speaking parsimonious may have a self-perception of being generous. Thirdly, in particular when it comes to perceptions, it is difficult to say how much these are associated with individual respondents as opposed to the legal systems which they have been chosen to represent. Fourthly, and in spite of some of the questions being very general, dissecting a topic into 37 questions makes it likely that some underlying issues will not receive full attention, such as the role of causation in determining loss, or the relationship between liability in damages and liability in unjust enrichment (history or coincidences may decide whether a remedy is labelled 'gain based damages' or 'restitution'), or the influence which objective (general) and subjective (special) notions of damage have on full compensation.

However, questionnaire-based comparative law surveys also offer a number of advantages, of which the present book makes good use. They allow a multitude of actors and legal systems to contribute in an authentic voice. And while some legal systems are given more prominence, small countries such as Luxembourg or other countries frequently overlooked in comparative studies such as Hungary or Portugal find themselves included. Such authenticity and variety make it less likely that the analysis is biased by the author's desire to find harmony amongst marked diversity, or irreconcilable differences where there are small variations. Instead, the book makes useful, often original, attempts to map and classify divergences and similarities, classifications which often transcend classical notions of legal families. The study also relates many important and well-known topics in liability law to full compensation as a focal point. All this makes it a valuable reference for further academic study.